REGULATION No. II OF 1910.

(RECEIVED THE ASSENT OF HIS HIGHNESS THE MAHARAJA ON THE 23RD AUGUST 1910.)

A Regulation further to amend the Mysore Military Regulation, II of 1899.

Whereas it is expedient to further amend the Mysore Military Regulation, II of 1899; His Highness the Maharaja is pleased to enact as follows :—

Preamble.

1. For the words "Imperial Service Troops" occurring in the preamble and paragraph 1 of the Regulation, the words "Imperial Service Cavalry and Transport Corps" shall be substituted, and the word "Corps," shall be inserted after the word "Transport" both in clause 2 of the preamble and in the heading below it. The word "Sepoys" occurring in paragraph 1 shall be omitted and the word "Drivers" inserted instead.

Amendment of preamble and paragraph 1 of Regulation II of 1899 as amended by Regulation V of 1900.

2. In paragraph 9, after the words "Squadron Commander" and "Section Commander," there shall be inserted the words "or Division Commander" and "or Division Dafadar," respectively.

Amendment of paragraph 9 of Regulation II of 1899.

3. Paragraph 12 shall be omitted.

Omission of paragraph 12 of Regulation II of 1899.

4. The words "Division Commanders" shall be inserted after the words "Squadron Commanders" occurring in paragraph 13, paragraph 14 and the heading under which these appear, and the words "and drivers" shall be inserted after the word "Sowars" occurring in paragraph 13.

Amendments of paragraphs 13 and 14 and the heading thereto of Regulation II of 1899.

5. Paragraphs 15, 18 and 19 shall be omitted.

Omission of paragraphs 15, 18 and 19 of Regulation II of 1899.

6. The words "for the information of Government" appearing at the end of paragraph 21 shall be omitted.

Amendment of paragraph 21 of Regulation II of 1899.

7. In paragraph 22, for the words "Troop and Transport Officers," the words "and Division Commanders" shall be substituted.

Amendment of paragraph 22 of Regulation II of 1899.

8. The words "Sepoys, Transport Lance Dafadars and" inserted in sub-para (b) of paragraph 23 by Regulation I of 1905, and sub-para (c) of the said paragraph with the amendments introduced by the said Regulation shall be repealed.

Amendment of paragraph 23 of Regulation II of 1899 as amended by I of 1905.

9. In sub-para (b) of paragraph 34, the word "Commandant's" shall be substituted for the word "Regimentdar's" wherever it occurs.

Amendment of paragraph 34 of Regulation II of 1899.

10. In paragraph 37, the words "or Division Commander" shall be inserted after the words "Squadron Commander."

Amendment of paragraph 37 of Regulation II of 1899.

11. In paragraph 67, in the second sub-heading, the word "and" occurring between the words "Non-Commissioned Officers" and "Sowars" and the words "Regimental, Transport and Hospital" in the third sub-heading shall be omitted; and the words "and Drivers" shall be inserted after the word "Sowars."

Amendment of paragraph 67 of Regulation II of 1899.

12. In paragraph 72, for the words "Imperial Service Troops" the words "Imperial Service Cavalry or Transport Corps, as the case may be" shall be substituted.

Amendment of paragraph 72 of Regulation II of 1899.

T. ANANDA ROW,
Dewan.

NOTIFICATION.

No. 59—*L. C., dated* 16*th August* 1910.

Under Rule 40 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying report of the Select Committee on the Bill to consolidate and amend the law relating to Guardians and Wards in Mysore is published for general information.

By Order,
S. HIRIYANNAIYA,
Secretary, Mysore Legislative Council.

Report of the Select Committee on the Bill to consolidate and amend the law relating to Guardians and Wards in Mysore.

We, the members of the Select Committee to whom the Bill was referred, have the honor to submit the following report :—

1. *Definitions.*—

"Minor means a person who has not completed the age of 18 years or, if he is not domiciled in Mysore, has not attained majority according to the law to which he is subject."

(*a*) *Minor.*—We have carefully considered the question whether any change is required in the definition of the word "minor" as adopted in the Bill, and we have arrived at the conclusion that no change is called for.

The definition prescribes to all persons domiciled in Mysore a uniform limit in consonance with the accepted ideas and the prevailing practice in the State, while giving to persons temporarily residing in the country the benefit of their own personal law.

The Committee recognize that in theory there is much to be said for a higher limit, namely 21; but the State has long recognised the lower limit for various purposes, *e.g.*, Section 3 of the Mysore Registration Regulation and Section 8 (1) (*b*) of the Mysore Village Offices Regulation, a very recent enactment.

It is also to be noted that even in British India the Government have found themselves unable to raise the limit to 21 in the vast majority of cases which do not come under the provisions of either the Guardians and Wards Act, or the Court of Wards Act.

We therefore recommend that the definition in the Bill be adopted by the Council.

"'District Court,' subject to the provisions of Section 4 of this Regulation and to the provisions of Section 12 of the Mysore Chief Court Regulation, 1884, and of any other like enactment for the time being in force, means a Court presided over by a District Judge."

(*b*) "*District Court.*"

For the sake of clearness, we have recast the definition of "District Court" as follows :—

"(4) 'District Court' includes a Court invested with the functions of a District Court under the provisions of Section 4 of this Regulation and also the Chief Court when exercising original civil jurisdiction under Section 12 of the Mysore Chief Court Regulation."

(c) "*Deputy Commissioner.*"—

"'Deputy Commissioner' means the chief officer in charge of the revenue administration of a district and includes any officer whom the Government, by notification in the official Gazette, may, by name or in virtue of his office, appoint to be Deputy Commissioner in any local area, or with respect to any class of persons, for all or any of the purposes of this Regulation."

The words "means the Chief Officer in charge of the revenue administration of a district and" occurring in the definition of this term are superfluous and have been removed. *Vide* the definition of the term in the Mysore General Clauses Regulation, 1899.

2. *Clause 4.*—This is a departure from the British Indian Act, VIII of 1890, on which the Bill is based, but is supported to some extent by the existing law under which a Subordinate Judge may be invested with the power of appointing a guardian to a minor. In view of the greater convenience resulting to the public residing at some distance from a District or a Subordinate Court, the Bill authorises Government to invest *any Court inferior in grade to a District Court* with jurisdiction under the Regulation.

The Committee accept the view as sound. At the same time, they entertain doubts as to whether the provisions in the proviso restricting the right of appeal from the orders of such inferior Courts to the District Court may be allowed to stand. In British India, the final Court of appeal in all cases under the Guardians and Wards Act is the High Court: and though, in the Bill, jurisdiction under the Regulation may be conferred on Courts inferior to the District Courts, we consider it desirable that the power of passing final orders in matters falling under the Regulation should be exercised by the Chief Court. To give a right of appeal first to the District Court and then to the Chief Court seems to us to be unnecessary. For these reasons, we recommend that the proviso to sub-clause (2), and sub-clause (3) be omitted.

Sub-clause (4) gives power to a District Court to withdraw and transfer cases under the Regulation, but does not confer any authority to *retransfer* cases withdrawn to the *same* Court. Such a power would be necessary in certain cases, *e.g.*, when a case has been withdrawn from the file of a Court for personal reasons relating to the presiding judge who subsequently ceases to be a Judge of that Court. With this view, we recommend that the following be added at the end of this sub-clause :—

"or retransfer them for trial or disposal to the Court from which they were withdrawn." Cf. Section 24 of the new Civil Procedure Code.

As under Section 21 of the General Clauses Regulation a power to make a rule or order under a Regulation includes also a power to add to, vary or rescind such a rule or order, we have omitted the words "and may cancel or vary such notification" from sub-clause (1) of this clause.

The whole clause as amended by us will read as follows :—

"Investiture of inferior Courts with jurisdiction of District Court for purposes of this Regulation."

"4. (1) The Government may, by notification in the Official Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Regulation.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this

Regulation upon the District Court, and the provisions of this Regulation relating to the District Court shall apply to such an inferior Court as if it were a District Court.

(3) The District Court may withdraw any proceedings under this Regulation from an inferior Court and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings *or retransfer them for trial or disposal to the Court from which they were withdrawn.*

(4) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(5) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court, shall, for the purposes of this section, be deemed to be a Court inferior in grade to a District Court."

"Finality of other orders."

"Save as provided by the last foregoing section and by Section 622 of the Code of Civil Procedure, an order made under this Regulation shall be final, and shall not be liable to be contested by suit or otherwise."

3. *Clause 47.*—Provision is made here only for a *revision* of orders passed by a Court under the Regulation. We are of opinion that provision should also be made for a *review* of such orders. We have therefore made the necessary additions to this clause, which as amended will be as follows :—

Finality of other orders.

"47. Save as provided by the last foregoing section and *by Sections 114 and 115* of the Code of Civil Procedure, an order made under this Regulation shall be final and shall not be liable to be contested by suit or otherwise."

4. *Clause 51 and item 2 of the Schedule.*—As the sections of the Civil Procedure Code intended to be amended by this clause have been incorporated in their amended form in the new Civil Procedure Code Bill about to become law, we have expunged this clause from the Bill. For a similar reason, we have omitted item No. 2 of the Schedule (enactments repealed).

5. We have also changed references in the Bill to the old Code of Civil Procedure to the corresponding sections or orders in the new Code.

6. In conclusion, we beg to recommend that the Bill as modified by us may be adopted by the Council. As the Bill has undergone very little alterations, we consider it unnecessary to reprint it with the report.

7. The following further changes more or less of a verbal character have also been made :—

(1) The words "in the case of a minor" have been prefixed to clause 5.

(2) Article "the" has been inserted between "in" and "manner" in clause 9 (1).

(3) The word "matters" has been substituted for "matter" in clause 22.

(4) The words "Order 32, Rule 4, sub-rule (2), of the Code of Civil Procedure" have been substituted for the words "Section 440 of the Code of Civil Procedure, as amended by this Regulation" at the end of sub-clause (2) of Clause 35.

(5) The word "the" has been inserted between the words "the intention of" and "Court" in sub-clause (3); and the words and figures "Rule 1 or Rule 2 of Order 39" have been substituted for "Section 492 or Section 493" in sub-clause (4) of Clause 42.

(6) The words and figures "Sections 114 and 115" have been substituted for "Section 622" in clause 47 (*vide* para 3 above).

1. K. P. PUTTANNA CHETTY.
2. H. V. NANJUNDAYYA.
3. D. SHAMA RAO.
4. S. NARAYANA RAO.
5. C. SRINIVASIENGAR.

18th July 1910.

I assent to the draft report, subject to the following remarks:—

1. Presumably, this Regulation is meant to apply to all persons irrespective of birth or nationality. This Regulation is a consolidating Regulation *vide* Preamble, and hence is meant to be an exhaustive treatment of all the matters that fall in its purview and hence all questions touching the guardians and wards must be settled under the provisions of this Regulation only.

But the omission of Section 2, clause (7); Section 5; Section 15, clauses (2) and (3); Section 17, clause (4) of the British Indian Act raises a doubt as to whether the legislature intends to exclude Europeans from the operation of this Regulation or whether the legislature does not want to retain the special provisions made for them in the British Indian Act, subject, of course, to the provisions of the Indian Majority Act which are made applicable thereunder to European British subjects in Native States also.

2. In the definition of "Minor," the Regulation makes a distinction between minors domiciled in Mysore, and minors not domiciled in Mysore. In the case of minors domiciled in Mysore, the age of majority is fixed at eighteen years in all cases. But, in the case of minors not domiciled in Mysore, the age of majority is to be the age of majority according to the law of the country of domicile.

The only instance in which the provisions of this Regulation are applicable to non-domicile minors is when the minor has property in Mysore, for admittedly the application for appointment of guardian of the person of the minor is to be made in the court of his domicile. To meet this solitary instance the Regulation has perpetuated the very complexities which it is the avowed object of the legislature to avoid.

Further, various complications will arise such as, whether an Indian is a minor or a major for whom a guardian has been appointed in British India before he is eighteen years of age and who according to the Indian Majority Act will be a minor till he attains twenty-one years of age; and whether to such an Indian the Mysore Courts can appoint a guardian notwithstanding he has completed eighteen years of age prior to the date of application.

Supposing an Indian for whom the British Indian Court has appointed a guardian removes his domicile from British India and resides in Mysore, whether before or after he is eighteen years of age, will the Mysore Courts regard him as still a minor, until he attains twenty-one years of age?

The Bill leaves the following questions open:—.

(1) Whether a regular suit lies for reliefs which can be sought for under the provisions of the proposed Regulation;

(2) Whether a guardian to the property of a minor coparcener in a Joint Hindu Family governed by the Mitakshara law, having no separate property of his own, can be appointed by the Court, under the proposed Regulation. The British Indian High Courts have concurred in answering the question in the negative by a process of reasoning which it is possible that the provisions of this Bill do not quite justify.

In clause 34, some amendment is needed to enable the Court in a proper case to exercise upon its own initiative the powers conferred under that clause without waiting for an application to be made by petition.

M. C. RANGIENGAR.